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## Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

## **USA COMMERCIAL MORTGAGE COMPANY,**

**Debtor.**

Case No. BK-S-06-10725-LBR

Chapter 11

# **FIRST OMNIBUS OBJECTION OF USACM TRUST TO PROOFS OF CLAIM BASED ENTIRELY UPON INVESTMENT IN DEL VALLE LIVINGSTON LOAN**

**Date of Hearing:** July 26, 2011  
**Time of Hearing:** 1:30 p.m.  
**Estimated Time for hearing:** 10 min.

The USACM Liquidating Trust (the “USACM Trust”) moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order disallowing the Proofs of Claim listed in **Exhibit A**. These claims were filed by investors (“Direct Lenders”) against USA Commercial Mortgage Company (“USACM”) based upon an investment in a loan to Del Valle Capital Corporation, Inc. (“Borrower”). This loan will be referred to as the DVL Loan. This Objection is supported by the Court’s record and the Declarations of Geoffrey L. Berman and Edward M. Burr in Support of Omnibus Objections to Proofs of Claim Based Upon the Investment in the DVL Loan. (the “Berman Decl.” and “Burr Decl.”).

1           THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE  
2           DIRECT LENDERS' RIGHTS TO REPAYMENT ON THE DVL LOAN OR TO  
3           SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF THE REAL  
4           PROPERTY SECURING THE DVL LOAN OR SHARE IN THE RECOVERY OF ANY  
5           FUNDS FROM THE GUARANTOR OF THE LOAN.

6           **MEMORANDUM OF POINTS AND AUTHORITIES**

7           **I. BACKGROUND FACTS**

8           **a. The USACM Bankruptcy**

9           On April 13, 2006 ("Petition Date"), USACM filed a voluntary petition for relief  
10 under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as  
11 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.  
12 Debtor's post-petition management of the Debtor was under the direction of Thomas J.  
13 Allison of Mesirow Financial Interim Management, LLC, who served as the Chief  
14 Restructuring Officer.

15           USACM was a Nevada corporation that, prior to the Petition Date, was in the  
16 business of underwriting, originating, brokering, funding and servicing commercial loans  
17 primarily secured by real estate, both on behalf of investors and for its own account. That  
18 business included the solicitation of investors to purchase fractional interest in loans that  
19 USACM originated and then serviced. These investors are referred to as "Direct Lenders"  
20 in USACM's bankruptcy case and in this Objection.

21           On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third  
22 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.  
23 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this  
24 Court, USACM sold the servicing rights to most of the loans it serviced to Compass  
25 Partners, LLC and Compass Financial Partners, LLC ("Compass"), including the DVL  
26 Loan. The sale to Compass closed on February 16, 2007.

1       The USACM Trust exists as of the Effective Date of the Plan, which was March 12,  
2 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the  
3 successor to USACM with respect to standing to seek allowance and disallowance of  
4 Claims under 11 U.S.C. § 502(a).

5       Upon information derived from filings in the United States District Court, District  
6 of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC,*  
7 *et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that Silar Advisors, LP  
8 (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan  
9 service agreements in the USACM bankruptcy case and took a secured interest in those  
10 Purchased Assets by executing a Master Repurchase Agreement (“Repurchase  
11 Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of  
12 Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

13       Further, from filings in the same action, the Trust believes that “Effective as of  
14 September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset  
15 Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset  
16 Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase  
17 Agreement to Asset Resolution, and Asset Resolution properly foreclosed on the assets of  
18 Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is  
19 now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-  
20 RCJ, along with certain affiliates.<sup>1</sup> William A. Leonard, Jr. was appointed trustee in the  
21 Asset Resolution case.

22       The Trust has attempted to monitor loan collections through monitoring the district  
23 court litigation and the ARC bankruptcy case, but has received limited information  
24

25       <sup>1</sup> 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP  
26 Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC,  
Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP  
DVL SPE LLC, and Shamrock SPE LLC.

1 concerning servicing and resolution of direct loans by Compass/Silar/Asset Resolution or  
2 their successors, including the trustee in bankruptcy for Asset Resolution. By Order  
3 entered on June 24, 2010 by the Hon. Robert C. Jones in United States Bankruptcy Court  
4 (Case No. BK-S-09-32824-RCJ), the servicing rights for 19 loans were transferred to  
5 Cross, FLS. The DVL Loan servicing rights were transferred to Cross, FLS by that Order.  
6 The Trust has been in contact with Cross, FLS with regard to the status of the DVL Loan.

7 The following is the extent of the USACM Trust's information on the current  
8 servicing and status of the DVL Loan.

9           **b. The DVL Loan**

10          USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding  
11 for an acquisition and development loan to a borrower identified as "Del Valle Capital  
12 Corporation, Inc." A copy of the Offer Sheet is attached hereto as **Exhibit B** and  
13 incorporated by this reference. (Berman Decl., ¶ 4.) The total loan amount proposed was  
14 \$19,250,000. The Offer Sheet described the investment as a "First Trust Deed  
15 Investment" and noted that the investment would be secured by a first deed of trust on  
16 approximately 143.6 acres with 38.2 acres zones for medium density residential housing in  
17 Livingston, California. The Offer Sheet indicates that the loan was intended for Borrower  
18 to acquire the raw real estate. The Offer Sheet indicated that the combined loan to value  
19 ratio would be 63% based on a February 6, 2006 appraisal by Sierra Valuation  
20 Consultants, and 57% based on purchase and sales contracts with Richmond Homes and  
21 Meritage Homes.

22          On August 25, 2005, Borrower made and delivered to various lenders, including the  
23 Direct Lenders identified in **Exhibit A**, a "Promissory Note Secured by Deed of Trust"  
24 (the "Note") and a Loan Agreement. (Berman Decl., ¶ 5.) The Note and Loan Agreement  
25 provided for a loan amount of \$18,000,000, which could be increased to \$19,250,000.  
26 (Berman Decl., ¶ 6.) The Note was secured by a "Deed of Trust, Assignment of Rents,

1 Security Agreement and Fixture Filing" ("Deed of Trust") that was recorded in the official  
2 records of Merced County, California on September 8, 2005, along with subsequent  
3 amendments thereto that secured the later loan advances that increased the principal  
4 amount due to the maximum \$19,250,000. (Berman Decl., ¶ 6.) The Note was also  
5 supported by an August 25, 2005 Guaranty signed by Scott Myers. (Berman Decl., ¶ 7.)

6 The USACM "Loan Summary" dated July 31, 2006 and filed in this case shows  
7 that Borrower was "Non-performing" on the Note as of July 31, 2006. (Berman Decl., ¶  
8.) During this bankruptcy case through the transfer of servicing to Compass, USACM  
9 treated the Direct Lenders with respect to any interim payments by the borrower in  
10 accordance with this Court's orders.

11 Counsel for the Trustee had a brief conversation with a representative of Cross,  
12 FLS regarding the status of the DVL Loan. According to Cross, FLS, the Borrower still  
13 owns the property, and the Direct Lenders are planning to foreclose and will thereafter try  
14 to sell the property. The guarantor, Scott Meyers, cannot be located and is believed to be  
15 out of the country.

16 **c. The DVL Claims**

17 **Exhibit A**, attached, lists Proofs of Claim filed by Direct Lenders that appear to be  
18 based upon an investment in the DVL Loan. (Burr Decl., ¶ 7.) **Exhibit A** identifies the  
19 Proof of Claim number, the claimant, the claimant's address, the total amount of the claim  
20 and the total amount of the claim that appears to be related to an investment in the DVL  
21 Loan based upon the information provided by the claimant. The claims listed in **Exhibit**  
22 **A** are referred to hereafter as the "DVL Claims." As required by Nevada LR 3007, a  
23 copy of the first page of the proof of claim for each of the claims referenced in **Exhibit A**  
24 are attached as **Exhibit C**.

1           **II. JURISDICTION**

2           The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
3           157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
4           proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

5           The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and  
6           Bankruptcy Rule 3007.

7           **III. APPLICABLE AUTHORITY**

8           Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
9           will be allowed unless a party in interest objects. If a party in interest objects to the proof  
10          of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
11          shall allow the Claim except to the extent that the Claim is “unenforceable against the  
12          debtor . . . under any . . . applicable law for a reason other than because such claim is  
13          contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is  
14          presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof  
15          of claim controverts the presumption, the creditor ultimately bears the burden of  
16          persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*  
17          *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.  
18          1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

19           **IV. THE OBJECTION**

20          The DVL Loan appears to have been a legitimate, arms-length transaction. In  
21          addition, the Direct Lenders took a known risk by investing in a promissory note secured  
22          by a first position lien on real property.

23          USACM is not liable for the Borrower's default or any decrease in the value of the  
24          collateral.

25          The Direct Lenders fail to state a claim because USACM does not appear to have  
26          breached the loan servicing agreements with respect to collection of the DVL Loan.

1 USACM was under no duty to foreclose on the collateral securing the DVL Loan or take  
2 any other action.

3 This objection will not affect the Direct Lenders' right to be repaid on the DVL  
4 Loan by the Borrower, to recover from the sale of any collateral that secured the DVL  
5 Loan or collect on the guaranty that supported the loan.

6 **V. CONCLUSION**

7 The USACM Trust respectfully requests that the Court disallow the claims against  
8 USACM listed in **Exhibit A** in full because those claims are based entirely upon an  
9 investment in the DVL Loan. This objection concerns only claims based upon an  
10 investment in the DVL Loan and not any other claims of any of the Direct Lenders. The  
11 USACM Trust also requests such other and further relief as is just and proper.

12 Dated: June 23, 2011.

13 LEWIS AND ROCA LLP

14 By s/John Hinderaker (AZ 18024)  
15 Robert M. Charles, Jr., NV 6593  
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18 Copy of the foregoing and pertinent  
19 portion of Exhibits mailed by first  
20 class postage prepaid U.S. Mail on  
June 23, 2011 to all parties listed on  
Exhibit A attached.

21 LEWIS AND ROCA LLP

22 s/ Matt Burns  
23 Matt Burns

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